Filed 6/6/03 In re A.D. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.D., a Person Coming Under the Juvenile Court Law.	B161421 (Los Angeles County Super. Ct. No. CK20415)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MICHAEL D., Defendant and Appellant; JOHN F. et al., Respondents.	

APPEAL from an order of the Superior Court of Los Angeles County. Brian Petraborg, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Craig Arthur, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, Sterling Honea, Principal Deputy County Counsel, for Plaintiff and Respondent.

Joseph D. MacKenzie for Respondent DeFacto Parents John and Patricia F.

In this dependency matter, the presumed father, Michael D., appeals from an order terminating his parental rights as to the minor child, A.D. On the facts of this case, the exception to termination of parental rights where the parents "have maintained regular visitation and contact with the child and child would benefit from continuing the relationship" (Welf. & Inst. Code, § 366.26, subd. (c)(1)(A))[1] does not apply, contrary to appellant's contention. We thus affirm the order terminating Michael D's parental rights.

FACTS

A.D. was born in October of 2000. In January of 2001, she was taken into protective custody. A week later, the Department of Children and Family Services (DCFS) filed a section 300 petition alleging that A.D. had suffered, or was at substantial risk of suffering, from parental neglect. That same day, the court ordered A.D. into out-of-home placement. The father was not present in court, nor was his identity or whereabouts known.

In March of 2001, the court declared A.D. a dependent of the court. On July 6, 2001, A.D. was placed in a new foster home, where she currently resides with respondents John and Patricia F.

On August 10, 2001, appellant contacted a social worker, claiming he was the father of A.D. Appellant admitted that he had not seen A.D. for the 10 months since "[t]hey moved out, [and he] lost track of them." A month later, the court authorized weekly monitored visits for appellant. DCFS noted that "[i]t is highly likely that A.D. will be adopted if parental rights are terminated." In November of 2001, appellant filed a section 388 petition requesting custody of his daughter. The court ruled that Michael D. was the presumed father of A.D. and continued his scheduled monitored visits.

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[1] All further statutory referenced are to the Welfare and Institutions Code.

Although social workers described this period of regularly scheduled visits between A.D. and appellant as "positive," on some occasions A.D. was ill when she returned from a visit with appellant. One doctor opined, "[I]t seems as if when visiting [her natural] family, [A.] is brought to the clinic with some medical problem afterwards." In addition, A.D. would "return filthy and ungroomed. Her diaper would be very stinky and full, her hair not combed, her clothes dingy, and she would be unbathed and no lotion on her skin." Also, "[w]hen she sees her father she stiffens and trembles." After one visit with appellant, Mrs. F. reported that A.D. "smelled awful, her face was puffy and [Mrs. F.] noticed that [A.] must have been crying a lot (swollen eyes)." During this same period, respondents John and Patricia F. filed a motion for de facto parent status, indicating their desire to adopt A.D. This motion was subsequently granted.

In September of 2002, the court resumed a section 366.26 hearing with testimony from an expert witness who stated that terminating A.D.'s relationship with her presumed father would not be detrimental to the child. The court found that although appellant maintained regular visitation and contact with A.D., she would not suffer or be greatly harmed by termination of the parent/child relationship. The court found that the section 366.26, subdivision (c)(1)(A) exception did not apply and terminated parental rights. Michael D. filed his notice of appeal on September 12, 2002.

DISCUSSION

I. Standard of Review

In child dependency matters, "the abuse of discretion standard is in order. The juvenile court is determining which kind of custody is appropriate for the child. Such a decision is typically reviewable for abuse of discretion." (*In re Jasmine* (2000) 78 Cal.App.4th 1339, 1351.) "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.'" (*Walker v. Superior Court* (1991) 53 Cal.3d. 257, 272, quoting *Shamblin v. Brattain* (1998) 44 Cal 3d. 474, 478-479.) Furthermore, "where a trial court has discretionary power to decide an issue, a reviewing court will not disturb

that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination." (*Adoption of D.S.C.* (1979) 93 Cal.App.3d. 14, 24-25.)

II. Benefit Exception

Section 366.26, subdivision (c)(1) provides: "[T]he court shall terminate parental rights and order the child placed for adoption . . . unless the court finds a compelling reason for determining that the termination would be detrimental to the child due to one or more of the following circumstances. [¶] (A) The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

Appellant contends that the exception found in section 366.26, subdivision (c)(1)(A) applies because he regularly visited A.D., has developed an emotional bond with her, and it would be detrimental to her if the court severed their parent/child relationship. The record, however, supports the juvenile court's finding that A.D.'s relationship with respondent foster parents, who wish to adopt her, is significantly more substantial than her relationship with appellant.

Ordinarily, the court "must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under one of four specified exceptions" stipulated in section 366.26, subdivision (c)(1). (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) However, if a parent relies on the exception under section 366.26, subdivision (c)(1)(A), he or she bears the burden of demonstrating that the continuation of the parent/child relationship will promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

In addition, the court will exercise the exception "on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*Id*. at pp. 575-576.)

Regular visitation between Michael D. and A.D. is not at issue here. That is, appellant must demonstrate that A.D. stands to receive a substantial benefit from their continuing parent/child relationship. The court's finding is supported by the record, in which expert witnesses testified that despite the potentially positive relationship between A.D. and her presumed father, Michael D., their relationship will not "outweigh the well-being [A.] would gain in a permanent home with new, adoptive parents" such as John and Patricia F. Unfortunately, frequent and even loving contact between appellant and A.D. is not sufficient to establish the requisite benefit to the child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) Despite the potentially significant emotional relationship between appellant and A.D., the juvenile court did not exceed the bounds of reason, nor did the court exceed its discretion by making an arbitrary, capricious, or patently absurd determination when deciding to terminate parental rights.

Here, appellant has not met the burden of showing a substantial detriment or harm to A.D. from the termination of their parent/child relationship. The court must look past a mere "positive" relationship and determine what is best for A.D. in the long term. A.D. has spent the substantial part of her life with her caretakers, who have given her life nurture, security and structure. This far overshadows A.D.'s visits with appellant, especially in light of appellant's being absent for nearly half of A.D.'s life. The stability, caring and loving environment from potential adoptive parents here outweigh any benefit A.D. would receive from continuing the parent/child relationship with appellant.

DISPOSITION

The order under review is affirmed.

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BOREN, P.J.

We concur:

NOTT, J.

DOI TODD, J.